

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch**

Easy Way 1,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0256149

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) finds there is insufficient evidence to support the determination by the Retailer Operations Division to withdraw the authorization of Easy Way 1 (“Appellant”) to participate as a retailer in the Supplemental Nutrition Assistance Program (SNAP). Accordingly, the Retailer Operations Division’s determination is **reversed**.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it withdrew the authorization of Easy Way 1 to participate as a SNAP retailer.

AUTHORITY

7 U.S.C. § 2023 and implementing regulations, at 7 CFR § 279.1, provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may . . . file a written request for review of the administrative action with FNS.”

CASE SUMMARY

In a letter dated September 6, 2022, the Retailer Operations Division informed Appellant that its SNAP authorization was being withdrawn pursuant to regulation, at 7 CFR § 278.1(l)(1)(v), because the store owner had an unpaid Transfer of Ownership Civil Money Penalty (TOCMP) for another store that he owned. That store, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), had been permanently disqualified from SNAP. The permanent disqualification determination letter informed Appellant that a TOCMP would be assessed in the event that the store was sold or ownership was transferred subsequent to the permanent disqualification.

When another store owner applied for SNAP authorization at the same store location as 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and submitted information showing that Appellant had sold the store, a TOCMP was assessed against Appellant in the amount of \$22,000.00, under 7 CFR § 278.6(f). The Retailer Operations Division withdrew the authorization of Easy Way 1 because Appellant owner, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), has not paid or set up an acceptable payment plan to pay the TOCMP.

In a September 27, 2022, email, Appellant, through counsel, requested an administrative review of the withdrawal determination. The request was granted and the withdrawal has been held in abeyance pending completion of this review.

STANDARD OF REVIEW

In an appeal of an adverse action, the appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means the appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2018), and is implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.1(l)(1)(v) establishes the authority upon which FNS shall withdraw the SNAP authorization of any firm that fails to pay a TOCMP.

7 CFR § 278.1(l)(1) states, in part:

FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons...

(v) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7 or any fines assessed under §§ 278.6(l) or 278.6(m) or a transfer of ownership civil money penalty assessed under § 278.6(f).

7 CFR § 278.6(f)(2) states:

Criteria for civil money penalties for hardship and transfer of ownership...

(2) In the event any retail food store or wholesale food concern which has been disqualified is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or other legal entity who sells or otherwise transfers ownership of the retail food store or wholesale food concern shall be subjected to and liable for a civil money penalty in an amount to reflect that portion of the disqualification period that has not

expired, to be calculated using the method found at § 278.6(g). If the retail food store or wholesale food concern has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period. The disqualification shall continue in effect at the disqualified location for the person or other legal entity who transfers ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil money penalty under this paragraph.

ANALYSIS AND FINDINGS

A review of the evidence does not support the Retailer Operations Division's determination in this case. Accordingly, it is unnecessary to address Appellant's contentions in this matter.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Retailer Operations Division. In addition, this administrative review decision does not establish policy or supersede Federal law or regulations.

CONCLUSION

Based on the analysis above, the determination by the Retailer Operations Division to withdraw the SNAP authorization of Easy Way 1, is reversed.

This administrative review decision is based on the specific circumstances of this case as documented by materials provided by Appellant and the Retailer Operations Division. In addition, this administrative review decision does not establish policy or supersede Federal law or regulations.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this determination are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in SNAP regulations, at 7 CFR § 279.7. If judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a Complaint is filed, it must be filed within 30 days of receipt of this decision.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

MICHELLE WATERS
ADMINISTRATIVE REVIEW OFFICER

January 12, 2023